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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,822	10/30/2003	Kevin Maher	1666.1000	1293
23649	7590	05/07/2007		
HANES & SCHUTZ, LLC 102 SOUTH TEJON ST. SUITE 800 COLORADO SPRINGS, CO 80903			EXAMINER' THANH, QUANG D	
			ART UNIT 3771	PAPER NUMBER
			MAIL DATE 05/07/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/696,822

Applicant(s)

MAHER, KEVIN

Examiner

Quang D. Thanh

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 18-20 is/are pending in the application.
- 4a) Of the above claim(s) 18 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/27/2006 has been entered.

2. This office action is responsive to the amendment filed on 12/27/2006. As directed by the amendment, claims 1-17 have been cancelled; and new claims 18-20 have been added. Thus, claims 18-20 are presently pending in this application. However, newly submitted claims 18-19 are directed to a non-elected species of figures 4-6. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 18-19 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Response to Amendment***

3. The amendment filed 12/27/06 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "for **continuous rotation**

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through 360 degrees", and "for imparting continuous 360 degrees rotation to the platform means" (claim 20). Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 20 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter as discussed above, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention.

### ***Claim Objections***

5. Claim 20 is objected to because of the following informalities: "the platform means" lacks antecedent basis. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heisler (3,152,802) view of Schaeffer (6,821,288). Heisler discloses an apparatus having a rotatable platform (col. 1, lines 50-51) thus capable of producing therapeutic vestibular stimulation in a patient, comprising: a platform 30 for supporting a human body (fig. 1), frame means (the A frame, fig. 1) rotatably supporting the platform 30 and capable of rotation continuously through 360 degrees and having at least one shaft 51 (fig. 2) carrying the platform means and defining an axis of rotation, and actuator means (or means to impart rotation) includes at least one circular planar disk 17 (fig. 2-3) having a center, the plane of the disk is perpendicular to the longitudinal axis of the at least one shaft and the center of the disk is coaxial with the longitudinal axis of the at least one shaft 51 (fig. 2-3), wherein the disk is operatively connected to the shaft for imparting continuous 360 degrees rotation to the platform means (fig. 1 and 8, col. 4, lines 25-30). Heisler also discloses the apparatus having a shoulder bands 40 (best seen fig. 1) and a lap belt 45 attached to the platform 30 (fig. 1), except for a head restraining band. However, Schaeffer teaches a movable therapy table that includes various straps such as a head restraining band, a chest restraining strap and leg restraining strap in order to stabilize the patient to the therapy table during use (fig. 1, col. 5, lines 34-36). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify Heisler's apparatus, to include a head restraining band, as suggested and taught by Schaeffer, for the purpose of providing additional securing means in order to securely stabilize the head of the patient to the apparatus during use (fig. 1, col. 5, lines 34-36).

***Response to Arguments***

7. Applicant's arguments filed 12/27/06 have been fully considered but they are not persuasive.

8. Regarding to the objection to the new matter "for continuous rotation through 360 degrees", and "for imparting continuous 360 degrees rotation", the examiner maintains that there is no support in the specification to teach continuous 360 degrees of rotation. Applicant relies on the disclosure of the treatment as being "spinning, rolling and tumbling the body" and "tumbling or somersault type of head rotation" to infer continuous 360 degrees of rotation. While it is true that these motions of "spinning, rolling, tumbling or somersault" involve a certain degree of rotation, it does not necessary require that the rotation to be continuously 360 degrees. The platform can be rotated 90 degrees forwardly and backwardly to produce a spinning, rolling or tumbling action.

9. Applicant's arguments with respect to claim 20 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (571) 272-4982. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The Central FAX phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for all communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Quang D. Thanh/



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